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# EXHIBIT #1

## GOVERNMENT'S OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND GOVERNMENT'S FOURTH MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

AL-HARAMAIN ISLAMIC FOUNDATION, *et al.*,

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

CV. 06-274- KI

**OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANTS**

In accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants George W. Bush, President of the United States; the National Security Agency; Keith B. Alexander, Director, National Security Agency; the Office of Foreign Assets Control; Robert W. Werner,[1] Director, Office of Foreign Assets Control; the Federal Bureau of Investigation; and Robert S. Mueller III, Director, Federal Bureau of Investigation, all sued in their official capacities (hereinafter, "Defendants"), by and through their undersigned counsel, hereby respond to Plaintiffs' First Set of Interrogatories as follows:

## GENERAL STATEMENT AND OBJECTIONS

Defendants make the following general objections, whether or not separately set forth, in response to each of the Interrogatories:

1. Defendants object to these Interrogatories because they purport to seek the disclosure of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 (9th Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure."). Any response to these Interrogatories would require Defendants to confirm or deny the existence of information in a manner that would reveal classified information or tend to reveal classified information.

2. Defendants object to the Interrogatories to the extent that they purport to call for the disclosure of information protected by the law enforcement privilege and investigatory files

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[1] Barbara C. Hammerle is currently the Acting Director of the Office of Foreign Assets Control of the U.S. Department of Treasury.

privilege; the deliberative process privilege; or the confidential informant privilege, or to the extent that the Interrogatories purport to call for the disclosure of information that is otherwise classified, privileged, or confidential under the law.

3. Defendants object to the Interrogatories to the extent that they purport to call for the disclosure of information that contains privileged attorney-client communications; constitutes attorney work product; discloses the mental impressions, conclusions, opinions, or legal theories of any attorneys or other representatives of Defendants; was prepared in anticipation of litigation; or is otherwise protected from disclosure under applicable privileges, laws, or rules.

4. Defendants object to the Interrogatories to the extent that they seek information that is unreasonably cumulative or duplicative. Interrogatories that call for information contained in such materials are unduly burdensome and exceed the scope of the obligations imposed by the Federal Rules of Civil Procedure.

5. Defendants object to the Interrogatories to the extent that they are vague; ambiguous; not limited in scope; unreasonably broad, oppressive, and burdensome; beyond the scope of permissible discovery; and seek information not relevant to the claim or defense of any party and not relevant to the subject matter of the action.

6. Defendants object to the Interrogatories to the extent that they seek information not within the possession or control of Defendants.

7. Defendants object to the unreasonably broad time period of this discovery, *i.e.*, "[f]rom January 1, 1999 onward," to the extent that Plaintiffs seek information outside of the relevant time period of the alleged violations put at issue in the Complaint.

8. In the course of responding to the Interrogatories, Defendants may elect to waive any of the objections stated herein with respect to an Interrogatory response. Should such waiver

occur, however, it shall not be construed as a waiver of objections to other Interrogatories or as a waiver of the privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

9. Defendants base the assertion of the foregoing and following objections on Defendants' current knowledge, information, and belief. Defendants, in providing these responses, are not waiving any objection based on relevancy, materiality, competence, privilege, immunity from disclosure, or admissibility on other grounds. Defendants also reserve any rights to make further objections to the Interrogatories as appropriate; to object to any additional discovery efforts that Plaintiffs might undertake in this litigation; and reserve all further rights to which Defendants may be entitled under the Federal Rules of Civil Procedure and the Local Rules.

10. The responses of Defendants to the Interrogatories are based upon information currently available. Defendants expressly reserve the right to supplement and amend these responses and objections.

Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each response given below, Defendants make the following specific objections and responses to the Interrogatories:

**SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES**

INTERROGATORY NO. 1. From January 1, 1999 onward, was electronic surveillance conducted of plaintiff Al-Haramain Islamic Foundation, Inc., or any attorney, director or officer thereof, by any of the defendants?

SPECIFIC OBJECTION TO INTERROGATORY NO. 1: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 (9th Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure."). Any response to this Interrogatory would require Defendants to confirm or deny the existence of information in a manner that would reveal classified information or tend to reveal classified information.

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory because it seeks information "[f]rom January 1, 1999 onward," as this period for discovery is unreasonably broad and exceeds the scope of the allegations as set forth in the Complaint.

Fourth, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

INTERROGATORY NO. 2. If the answer to question 1 is yes, please list each date when electronic surveillance was conducted.

SPECIFIC OBJECTION TO INTERROGATORY NO. 2: See Specific Objections to Interrogatory No. 1, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 1.

INTERROGATORY NO. 3. If the answer to question 1 is yes, please list the specific defendant or defendants which conducted the electronic surveillance for each date listed.

SPECIFIC OBJECTION TO INTERROGATORY NO. 3: See Specific Objections to Interrogatory No. 1, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 1.

INTERROGATORY NO. 4. If the answer to question 1 is yes, was a warrant issued under the Foreign Intelligence Surveillance Act (FISA) for each date listed when electronic surveillance was conducted?

SPECIFIC OBJECTION TO INTERROGATORY NO. 4: See Specific Objections to Interrogatory No. 1, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 1.

INTERROGATORY NO. 5. If the answer to question 1 is yes, and no warrant was issued under FISA, was a warrant issued by any court other than the FISA court for each date listed when electronic surveillance was conducted?

SPECIFIC OBJECTION TO INTERROGATORY NO. 5: See Specific Objections to Interrogatory No. 1, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 1.

INTERROGATORY NO. 6. From January 1, 1999 onward, was electronic surveillance conducted of Soliman Al-Buthi, a director and officer of plaintiff Al-Haramain Islamic Foundation, Inc., by any of the defendants?

SPECIFIC OBJECTION TO INTERROGATORY NO. 6: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 ($9^{th}$ Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure."). Any response to this Interrogatory would require Defendants to confirm or deny the existence of information in a manner that would reveal classified information or tend to reveal classified information.

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory because it seeks information "[f]rom January 1, 1999 onward," as this period for discovery is unreasonably broad and exceeds the scope of the allegations as set forth in the Complaint.

Fourth, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

INTERROGATORY NO. 7. If the answer to question 6 is yes, please list each date when electronic surveillance was conducted.

SPECIFIC OBJECTION TO INTERROGATORY NO. 7: See Specific Objections to Interrogatory No. 6, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 6.

INTERROGATORY NO. 8. If the answer to question 6 is yes, please list the specific defendant or defendants which conducted the electronic surveillance for each date listed.

SPECIFIC OBJECTION TO INTERROGATORY NO. 8: See Specific Objections to Interrogatory No. 6, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 6.

INTERROGATORY NO. 9. If the answer to question 6 is yes, was a warrant issued under the Foreign Intelligence Surveillance Act (FISA) for each date listed when electronic surveillance was conducted?

SPECIFIC OBJECTION TO INTERROGATORY NO. 9: See Specific Objections to Interrogatory No. 6, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 6.

INTERROGATORY NO. 10. If the answer to question 6 is yes, and no warrant was issued under FISA, was a warrant issued by any court other than the FISA court for each date listed when electronic surveillance was conducted?

SPECIFIC OBJECTION TO INTERROGATORY NO. 10: See Specific Objections to Interrogatory No. 6, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 6.

INTERROGATORY NO. 11. From January 1, 1999 onward, was electronic surveillance conducted of plaintiff Wendell Belew by any of the defendants?

SPECIFIC OBJECTION TO INTERROGATORY NO. 11: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 ($9^{th}$ Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure."). Any response to this Interrogatory would require Defendants to confirm or deny the existence of information in a manner that would reveal classified information or tend to reveal classified information.

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory because it seeks information "[f]rom January 1, 1999 onward," as this period for discovery is unreasonably broad and exceeds the scope of the allegations as set forth in the Complaint.

Fourth, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

INTERROGATORY NO. 12. If the answer to question 11 is yes, please list each date when electronic surveillance was conducted.

SPECIFIC OBJECTION TO INTERROGATORY NO. 12: See Specific Objections to Interrogatory No. 11, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 11.

INTERROGATORY NO. 13. If the answer to question 11 is yes, please list the specific defendant or defendants which conducted the electronic surveillance for each date listed.

SPECIFIC OBJECTION TO INTERROGATORY NO. 13: See Specific Objections to Interrogatory No. 11, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 11.

INTERROGATORY NO. 14. If the answer to question 11 is yes, was a warrant issued under the Foreign Intelligence Surveillance Act (FISA) for each date listed when electronic surveillance was conducted?

SPECIFIC OBJECTION TO INTERROGATORY NO. 14: See Specific Objections to Interrogatory No. 11, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 11.

INTERROGATORY NO. 15. If the answer to question 11 is yes, and no warrant was issued under FISA, was a warrant issued by any court other than the FISA court for each date listed when electronic surveillance was conducted?

SPECIFIC OBJECTION TO INTERROGATORY NO. 15: See Specific Objections to Interrogatory No. 11, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 11.

INTERROGATORY NO. 16. From January 1, 1999 onward, was electronic surveillance conducted of plaintiff Asim Ghafoor by any of the defendants?

SPECIFIC OBJECTION TO INTERROGATORY NO. 16: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 (9th Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure."). Any response to this Interrogatory would require Defendants to confirm or deny the existence of information in a manner that would reveal classified information or tend to reveal classified information.

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory because it seeks information "[f]rom January 1, 1999 onward," as this period for discovery is unreasonably broad and exceeds the scope of the allegations as set forth in the Complaint.

Fourth, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

INTERROGATORY NO. 17. If the answer to question 16 is yes, please list each date when electronic surveillance was conducted.

SPECIFIC OBJECTION TO INTERROGATORY NO. 17: See Specific Objections to Interrogatory No. 16, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 16.

INTERROGATORY NO. 18. If the answer to question 16 is yes, please list the specific defendant or defendants which conducted the electronic surveillance for each date listed.

SPECIFIC OBJECTION TO INTERROGATORY NO. 18: See Specific Objections to Interrogatory No. 16, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 16.

INTERROGATORY NO. 19. If the answer to question 16 is yes, was a warrant issued under the Foreign Intelligence Surveillance Act (FISA) for each date listed when electronic surveillance was conducted?

SPECIFIC OBJECTION TO INTERROGATORY NO. 19: See Specific Objections to Interrogatory No. 16, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 16.

INTERROGATORY NO. 20. If the answer to question 16 is yes, and no warrant was issued under FISA, was a warrant issued by any court other than the FISA court for each date listed when electronic surveillance was conducted?

SPECIFIC OBJECTION TO INTERROGATORY NO. 20: See Specific Objections to Interrogatory No. 16, which are hereby incorporated by reference as this Interrogatory is dependent upon Interrogatory No. 16.

INTERROGATORY NO. 21. On what date was the decision made to classify as SCI (sensitive compartmented information) the document previously filed with the court as a sealed document in this action?

SPECIFIC OBJECTION TO INTERROGATORY NO. 21: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 (9th Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.").

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Fourth, Defendants specifically object to this Interrogatory because it seeks information not relevant to the claim or defense of any party and not relevant to the subject matter of the action.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

INTERROGATORY NO. 22. Which government official(s) or employee(s) made the decision to classify the document as SCI, and which agency did that official or employee work for?

SPECIFIC OBJECTION TO INTERROGATORY NO. 22: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 (9th Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.").

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Fourth, Defendants specifically object to this Interrogatory because it is a compound question and thus violates Fed. R. Civ. P. 33(a), which states that no party may serve upon any other party written interrogatories exceeding 25 in number without leave of court or written stipulation.

Fifth, Defendants specifically object to this Interrogatory because it seeks information not relevant to the claim or defense of any party and not relevant to the subject matter of the action.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

INTERROGATORY NO. 23. On what date was the decision made to classify the document previously filed with the court as a sealed document in this action in a classification category additional to the SCI classification?

SPECIFIC OBJECTION TO INTERROGATORY NO. 23: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 (9th Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.").

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Fourth, Defendants specifically object to this Interrogatory to the extent that it seeks information not relevant to the claim or defense of any party and not relevant to the subject matter of the action.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

INTERROGATORY NO. 24. Which government official(s) or employee(s) made the decision to classify the document in a classification category additional to the SCI classification?

SPECIFIC OBJECTION TO INTERROGATORY NO. 24: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 (9th Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.").

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Fourth, Defendants specifically object to this Interrogatory because it seeks information not relevant to the claim or defense of any party and not relevant to the subject matter of the action.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

INTERROGATORY NO. 25. What was the reason for classifying the sealed document?

SPECIFIC OBJECTION TO INTERROGATORY NO. 25: Defendants first specifically object to this Interrogatory because it purports to seek the production of classified national security information that could be subject to a claim of state secrets privilege, *see United States v. Reynolds*, 345 U.S. 1, 7-8 (1953); *Kasza v. Browner*, 133 F.3d 1159, 1165 (9th Cir.) ("The state secrets privilege is a common law evidentiary privilege that allows the government to deny discovery of military secrets."), *cert. denied*, 525 U.S. 967 (1998), or subject to other applicable statutory privileges, including 50 U.S.C. § 403-1(i)(1) ("The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.").

Second, Defendants specifically object to this Interrogatory to the extent that it purports to call for information protected from disclosure by the law enforcement and investigatory files privilege, the deliberative process privilege, or any other privilege.

Third, Defendants specifically object to this Interrogatory to the extent that it seeks information that is not in the possession or control of Defendants.

Fourth, Defendants specifically object to this Interrogatory because it seeks information not relevant to the claim or defense of any party and not relevant to the subject matter of the action.

Finally, because this Interrogatory is wholly objectionable, no answer is possible. *See* Fed. R. Civ. P. 33(b)(1).

Dated: May 10, 2006

**FOR THE OBJECTIONS:**

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2006, copies of the foregoing Objections to Plaintiffs' First Set of Interrogatories to Defendants were served upon the following by e-mail and first-class mail:

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